No. 82-1128

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IVAN PAVKOVIC, Director, Illinois Department of Mental Health and Developmental Disabilities,

Petitioner,

vs.

ROBERT TIDWELL, et al.,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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S.A. 1

In the

United States Court of Appeals

For the Seventh Circuit

Nos. 81-1402, 81-1654

ROBERT TIDWELL, et al.,

Plaintiffs-Appellees,

v.

RICHARD SCHWEIKER, etc., et al.,

Defendants-Appellees,

and

IVAN PAVKOVIC, etc.,

Defendant-Appellant.

ROBERT SCHRECKENBERG, et al.,

Plaintiffs-Appellees,

v.

RICHARD S. SCHWEIKER, etc., et al.,

Defendants-Appellees,

and

IVAN PAVKOVIC, etc., et al.,

Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
Nos. 73-C-3014, 74-C-183—James B. Parsons, *Judge.*

ARGUED DECEMBER 8, 1981—DECIDED APRIL 30, 1982

Before CUMMINGS, *Chief Judge*, SWYGERT, *Senior Circuit Judge*, and CUDAHY, *Circuit Judge*.

SWYGERT, *Senior Circuit Judge*. In 1973 plaintiff-appellee Robert Tidwell, for himself and on behalf of a class similarly situated, filed a complaint against the Director of the Illinois Department of Mental Health ("DMH").[1] An amended complaint was later filed in which Tidwell named the Secretary of the United States Department of Health, Education and Welfare[2] and the Administrator of the Social Security Administration[3] as additional defendants ("federal defendants"). In 1974 plaintiff-appellee Robert Schreckenberg, for himself and on behalf of others similarly situated, filed a suit identical to the Tidwell complaint. The two suits were consolidated pursuant to the state defendant's motion.[4] The plaintiffs challenged the statutory and regulatory scheme providing for the payment of Social Security disability benefits ("Social Security benefits" or "disability benefits") to institutionalized mental patients.

Specifically, plaintiffs alleged that their disability benefits were unlawfully seized by the state and federal defendants in violation of 42 U.S.C. §§ 407 and 1983 and the Fifth and Fourteenth Amendments of the Constitution. The plaintiffs' disability benefits were subject to seizure by one of two methods:

> (1) If a patient entering an Illinois institution was determined to be competent, the patient was asked to sign DMH Form 623. The form allowed the state to accumulate disability benefits and other assets in

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[1] The DMH is now called the, "Department of Mental Health and Developmental Disabilities." Leroy Levitt, the original defendant in this case, has been replaced by Ivan Pavkovic, the present director.

[2] Caspar Weinberger, former Secretary of HEW, has been replaced by Richard Schweiker.

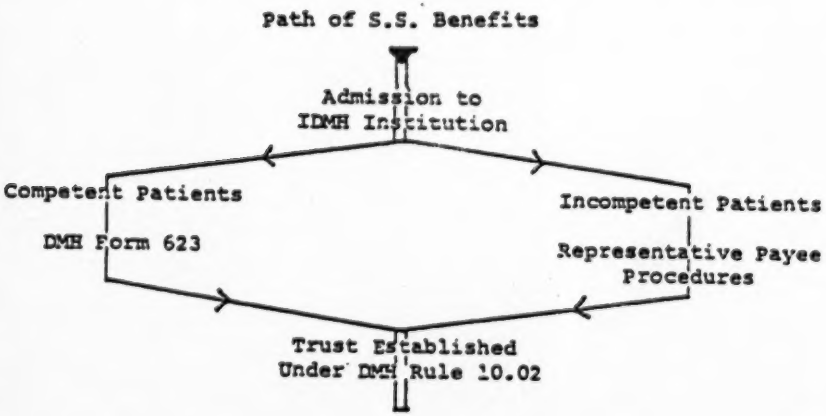
[3] John Svahn is presently the Commissioner of the Social Security Administration.

[4] The Tidwell and the Schreckenberg plaintiffs will be referred to collectively as "Tidwell." Unless otherwise stated, the state defendants will be referred to as "the State."

a trust fund. When the assets in the fund reached $400, the state could use the surplus to pay the support costs incurred by the patient at the institution. DMH Form 623 did not disclose to the patient that the patient would be cared for regardless of whether the form was signed, that the agreement was revocable at any time or that the agreement covered Social Security disability benefits, which were not otherwise subject to legal process. *See* Figure I.

(2) If a patient was determined to be incompetent, a representative payee was appointed to receive the patient's disability benefits. The superintendent of the patient's institution was appointed as the payee if there was no other person available, such as a family member, to serve in that capacity. The process for appointing a representative payee did not provide notice to the patient or an opportunity for the patient to submit evidence. Once a representative payee was appointed, the disability benefits were accumulated in a trust fund identical to that used in conjunction with Form 623. *See* Figure I.

FIGURE I



A three-judge court was impaneled to consider the issues raised by this suit. On June 23, 1976 the court found that the Illinois statutory and regulatory scheme involving the use of DMH Form 623 was in conflict with 42 U.S.C. § 407 and, therefore, violated the supremacy clause of the Constitution. The three-judge court also found that the appointment of an Illinois institutional superintendent as a representative payee was not *per se* unlawful, but that the procedures actually used to appoint such a payee violated due process standards. The court ordered specific remedial steps to cure both violations.

Subsequent to this ruling, both the State and the federal defendants altered their procedures relating to patients' disability benefits. On March 5, 1979 the three-judge court amended its 1976 order and determined that the revised federal procedures for appointing a representative payee now comported with due process. The court also found that revised DMH Form 623 was no longer an assignment in violation of 42 U.S.C. § 407. Additionally, Tidwell's motion for class certification was granted.

After this decision, plaintiffs' attorneys filed motions in the Northern District of Illinois pursuant to 42 U.S.C. § 1988 requesting attorney's fees against both the State and federal defendants. The court concluded that fees could not be awarded against the federal defendants and Tidwell voluntarily reduced fees attributable solely to these defendants. On February 6, 1981, the district court held that the State was responsible for all remaining attorney's fees and applied a 1.5 lodestar multiplier to the hourly rates of all attorneys and paralegals.

The State now appeals from the final judgment of the court on four grounds:

(1) Tidwell did not have standing to challenge the legality of DMH Form 623;

(2) the original Form 623 was not an assignment in violation of 42 U.S.C. § 407;

(3) the district court erred in awarding attorney's fees; and,

(4) the district court erred in failing to apportion attorney's fees between the state and federal defendants and by applying a lodestar multiplier.

Tidwell contends that all the issues raised on appeal by the State are moot except whether the award of attorney's fees was proper. We shall first consider the mootness issue.

I

Tidwell argues that the underlying controversy in this case has been extinguished and further review by this court would be meaningless. Tidwell bases this argument on the fact that the State defendant voluntarily altered DMH Form 623 and the new form has been in effect for more than five years; the challenged activity has ceased and there is no reasonable expectation that the conduct will be repeated.

The record does not show that the State's actions were "voluntary." The DMH altered Form 623 only after the three-judge court declared it illegal and this conduct was in compliance with the judgment of the court. If a party believes an order is incorrect, the remedy is to comply promptly with that order or judgment (absent a stay) and then to appeal. *Maness v. Meyers*, 419 U.S. 449, 458-59 (1979). A party does not lose the right to appeal simply because it complies with an order of the court. Further, in the instant case, there is reason to believe that the conduct complained of may be repeated. In its reply brief, the State reaffirmed its belief that the original Form 623 was legal and, stated that if allowed to do so, it would reinstitute the form's use. Where a reasonable expectation exists that the conduct will be repeated, the issue is not moot. *Johnson v. Board of Education*, 664 F.2d 1069, 1071-72 (7th Cir. 1981). Because we have concluded that none of the issues raised in the State's appeal are moot, we now turn to the merits of those arguments.

II

The State contends that Tidwell does not have standing to challenge DMH Form 623 because none of the

named plaintiffs actually signed Form 623 or were asked to sign the form. The State's argument boils down to one simple proposition: if Tidwell cannot challenge Form 623 as an individual, he cannot challenge the form as the representative of a class. Any issue involving Article III and a class action is not that simple. In *Sosna v. Iowa*, 419 U.S. 393 (1975), the Supreme Court recognized that the class nature of a lawsuit may establish jurisdiction where none exists for an individual.[5] "When the district court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted [by the named plaintiff whose individual claim was mooted]. We are of the view that this factor significantly affects the mootness determination." *Sosna*, 419 U.S. at 399. A case or controversy may exist ". . . between a named defendant and a member of the class represented by the named plaintiff even though the claim of the named plaintiff has become moot." *Id.* at 402. The only reasonable interpretation of *Sosna* is that the "personal stake" of the class can satisfy Article III when the named plaintiff no longer has a personal stake. This doctrine was further elaborated in *U.S. Parole Commission v. Geraghty*, 445 U.S. 388 (1980). In *Geraghty* the named plaintiff's claim was mooted subsequent to the denial of a motion for class certification. The Supreme Court found that the plaintiff had a continuing stake in the certification of the class and could appeal the denial of the certification. The Court continued: "If the appeal results in reversal of the class certification denial, and a class subsequently is properly certified, the merits of the class claim then may be adjudicated pursuant to the

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[5] In *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 40, n.20 (1976), the Supreme Court stated: "That a suit may be a class action . . . adds nothing to the question of standing . . . ." This rule has obviously been changed by *Sosna, supra*, where the Court stated:

> If appellant had sued only on her own behalf, both the fact that she now satisfies the one-year residency requirement and the fact that she has obtained a divorce elsewhere would make this case moot and require dismissal. *Sosna v. Iowa*, 419 U.S. at 399. *See* n.6, *infra*.

holding in *Sosna.*" *Id.* at 404. Although *Geraghty* makes it clear that we cannot look to the class alone to satisfy standing requirements when a class has not been certified, it also reaffirms the rule established in *Sosna* that the personal stake of a class is sufficient to fulfill the case or controversy requirement once a class has been certified. There is no reason why the personal stake of a class should be allowed to satisfy Article III only in situations where the named plaintiff's claim has become moot. The "personal stake" required to prevent mootness is indistinguishable from the "personal stake" required for a grant of standing.[6] An application of the underlying principle in *Sosna* and *Geraghty* results in allowing a properly certified class to satisfy the personal stake requirement at all stages of the litigation. Given this, we believe the best way to resolve a question of standing in a class action is to first, determine whether the class satisfies Article III and, second, determine whether the named plaintiff satisfies the requirements of Rule 23, Federal Rules of Civil Procedure.[7]

Determining Article III's uncertain and shifting contours in a class action "requires reference to the purposes of the case-or-controversy requirement." *Geraghty, supra,* 445 U.S. at 402. The purpose of the personal stake required under Article III is to assure that the

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[6] The Supreme Court has accepted the definition of mootness as "the doctrine of standing set in a time frame: The personal requisite interest that must exist at the commencement of the litigation [standing] must continue throughout its existence [mootness]." *Geraghty, supra,* 445 U.S. at 397. "As the Court notes today, the same threshold requirement must be satisfied throughout the action." *Ibid.,* at 411 (Powell, J., *dissenting*).

[7] This is what the Supreme Court implicitly holds in *Geraghty.* The *Geraghty* Court concluded that simply because the class assures that Article III values are not undermined, it does not automatically "establish that the named plaintiff is entitled to continue litigating the interests of the class. 'It does shift the focus of examination from the elements of justiciability to the ability of the named representative to fairly and adequately protect the interests of the class. Rule 23(a).'" *Geraghty, supra,* 445 U.S. at 405-06.

case is in a form capable of judicial resolution. *Id.* at 403. A dispute is capable of judicial resolution if the parties are (1) adverse and (2) capable of generating a concrete record. If these two factors are met by a class, there are no constitutional reasons for barring the suit from the courts. This means that for purposes of resolving Article III standing questions, the class can be viewed as the plaintiff, not the named representative.[8] This is consistent with the rule that a class acquires a separate legal status once it has been certified. *See Sosna, supra,* 419 U.S. at 399.

In the instant case the class was certified as all patients, past and present, confined in DMH institutions whose payments of disability benefits were unlawfully appropriated by the defendants. The class has standing to challenge Form 623 because there is a case or controversy between some members of the class and the state defendants with respect to Form 623. The more difficult inquiry, however, is whether the named plaintiffs are the proper representatives of the entire class. The district court found that the interests of the named representatives were not antagonistic to the interests of the general class and that the representation of the named plaintiffs was adequate. Further, the court found that a sufficient number of plaintiffs were involved to make joinder impracticable. Although the State does not contest these findings, it does challenge the district court's determination that the claims of the named plaintiffs were typical of the claims of all members of the class. In other words, the State contends that the class really includes two subclasses and the named plaintiffs are not the proper representatives of the subclass of mental patients deprived of their benefits by the use of Form 623.

We do not believe that Fed.R.Civ.P. 23 requires that the class be limited only to those individuals who have suffered precisely the same injury as the named plain-

[8] *See Deposit Guarantee National Bank v. Roper,* 445 U.S. 326, 342-44 (1980) (Stevens, J., *concurring*); *Susman v. Lincoln American Corp.,* 587 F.2d 866, 869-70 (7th Cir. 1978), *cert. denied,* 445 U.S. 942 (1980).

tiff. *See, e.g., Hill v. Western Electric Co., Inc.*, 596 F.2d 99, 102 (4th Cir. 1979), *cert. denied*, 444 U.S. 929; *Senter v. General Motors Co.*, 532 F.2d 511, 524-25 (6th Cir. 1976), *cert. denied*, 429 U.S. 870; *Huff v. N.D. Cass Co. of Alabama*, 485 F.2d 710 (5th Cir. 1973) (*en banc*). This does not mean, however, that a completely uninjured plaintiff can sue on behalf of an injured class. Rule 23 prevents this.

On the facts of this case, it was unnecessary for the named plaintiffs to actually have signed Form 623 to be proper representatives for the entire class. Rule 23 is designed to ensure vigorous advocacy and "[v]igorous advocacy can be assured through means other than the traditional requirement of a personal stake in the outcome." *Geraghty, supra*, 445 U.S. at 404.

The nexus between the named plaintiffs and those class members actually injured by Form 623 is sufficient in this case to ensure that the concerns underlying Article III are not undermined. The record discloses that an inquiry was made, presumably when a patient was admitted to a DMH facility, to determine whether a patient was competent or incompetent. At this point, a patient was threatened by both Form 623 and the representative payee system and the district court expressly determined that merely by the confinement process, every DMH patient was subject to Form 623 procedures. Regardless of whether a patient signed Form 623 or had a representative payee appointed, the Social Security benefits ended up in a trust established under DMH Rule 10.02. (*See* Figure I.) The expenses of the institution received priority payment out of the trust funds.

The above facts establish that the plaintiffs, named and unnamed, were subject to an illegal system of which Form 623 was a part. Standing to challenge the entire system will not be defeated simply because Tidwell did not sign Form 623. We believe that the named representatives are "members" of the class as defined and that their claims are "typical" of the claims asserted by the class. The decision as to the propriety of certification of a class can only be set aside for an abuse of discretion, *King v. Kansas City Southern Ind., Inc.*, 519 F.2d 20 (7th Cir. 1975), and no abuse is evident in the instant case.

Because the class satisfies standing requirements and the named plaintiffs are adequate representatives of the class, there is no reason for us to determine whether the named representatives could have challenged Form 623 as individuals.[9] Of course, a court may insist that a named plaintiff suffer the identical injury as the putative class if the failure to name an identically injured plaintiff is indicative of inadequate representation or an abstract or hypothetical conflict. Neither of these problems exists in the instant case.[10]

III

We agree with the three-judge court that the original DMH Form 623 violated 42 U.S.C. § 407. Section 407 provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

The Supreme Court has issued one opinion to date on the scope and purpose of section 407: *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973). Though not directly analogous to the facts of this case, *Philpott* is instructive. In *Philpott* an individual named "Wilkes"

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[9] There is every indication that Tidwell would have standing to challenge Form 623 as an individual. All the plaintiffs, named and unnamed, have suffered the same harm (deprivation of Social Security benefits) by the same cause (defendants' scheme to deprive competent and incompetent patients of their benefits); only the conduit through which the injury flows differs.

[10] Both Tidwell and the State argue that the issue of standing is somehow related to whether a conspiracy existed between the state and federal defendants. The logic of these arguments escapes us. The existence of a conspiracy will be discussed, *infra*, with respect to the award of attorney's fees.

applied for assistance from the Essex County, New Jersey, Welfare Board. As a condition for receiving the assistance, the Board required Wilkes to execute a reimbursement agreement. The agreement had the effect of a judgment and allowed the Board to obtain reimbursement out of subsequently discovered or acquired property. Wilkes began receiving assistance from the Board, and soon after he was awarded lump-sum retroactive disability benefits under the Social Security Act. Wilkes declined to repay his interim assistance and the Board sued to reach the bank account in which Wilkes had deposited his benefit check. The Supreme Court held that section 407 on its face prevented the Board from reaching these funds. The Court concluded that the language of section 407 is all inclusive and it "imposes a broad bar against the use of any legal process to reach all Social Security benefits." *Id.* at 417.

Despite the breadth of *Philpott*, the State insists that Form 623 was not an assignment; it was revocable and voluntary, the funds were used for the purpose they were granted for, and the agreement did not manifest a present intent on the part of the mental patient to transfer all his rights or complete control. We are not persuaded by these arguments.[11]

Even though Form 623 was revocable, it still remained a transfer or assignment while it was in effect. Further, we are not convinced that it was voluntary. Nowhere on the face of the form did it state that a patient would be treated regardless of whether he signed the form or that the agreement was revocable. The restrictive definition of assignment based on Illinois law advanced by the State ignores the language and the purpose of section 407. An agreement need not have permanence or transfer complete control of disability benefits before it falls within the ambit of section 407.

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[11] *Philpott* forecloses the State's argument that section 407 does not apply when the benefits are used for the purpose for which they were granted.

The State cites three cases which it believes require a reversal of the three-judge court.[12] In these three cases, *Moore*, *French*, and *Tunnicliffe*, the facts are similar. Applicants for Social Security benefits were granted interim assistance by a local welfare department. There was generally a six-month delay between the date the federal benefits were applied for and the date they were received. The first federal payment included a lump-sum payment for benefits retroactive to the application date. The local department required the recipient to sign a loan agreement and an authorization to pay a claim. When the recipient received his Social Security benefits, including his lump-sum retroactive payment, he became obligated to pay back the interim assistance to the local agency. The agreements in all three cases were held valid even though a recipient was required to sign the agreement before receiving interim assistance and even though the agreements did not disclose a person's rights under *Philpott* or section 407.

Moore, *French*, and *Tunnicliffe* are distinguishable from the facts in the instant case and we do not believe they support the State's position. The agreements were nothing more than an obligation to pay back a loan and they did not delineate the source of the repayment. The agreements did not subject Social Security benefits to any legal process nor did they transfer control of Social Security benefits to the State. Most importantly, unlike Form 623, these agreements did not result in monthly Social Security checks actually being received and disbursed by the state agency.[13] If a recipient from *Moore*,

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[12] *Moore v. Colautti*, 483 F. Supp. 357 (E.D. Pa. 1979), *aff'd*, 633 F.2d 210 (3d Cir. 1980); *French v. Director, Michigan Dept. of Social Services*, 92 Mich. App. 701 (1979); *Tunnicliffe v. Commonwealth of Pennsylvania Dept. of Public Welfare*, 483 Pa. 275 (1978).

[13] In *Moore*, *supra*, n.12, some of the lump sum Social Security checks were actually received by the state agency, not the recipient of the Social Security benefits. The agency paid itself the money owed by the recipient and then paid the remainder to the recipient. The checks were paid directly to the state agency in accordance with the Interim Assistance

(Footnote continued on following page)

French, or *Tunnicliffe* chose not to repay the local agency, the Social Security funds could not be reached. In the instant case, the recipients had no choice of whether to pay the State for the service they received; the state received and cashed their checks. Further, the DMH was obligated to pay its own expenses first when a trust was created pursuant to Form 623, putting the State in the position of a preferred creditor; a position found illegal by the Supreme Court in *Philpott*.

We are convinced that Form 623 is a transfer or an assignment in violation of section 407. Unless a patient in a DMH institution is advised that he will receive treatment regardless of whether he signs Form 623, that Form 623 is revocable, and that the form covers Social Security benefits not subject to legal process, it cannot be said that Form 623 is voluntary or that the patient retains enough control to remove the agreement from the ambit of section 407.

IV

42 U.S.C. § 1988 gives courts the discretion to award attorney's fees to the prevailing party in civil rights suits. It is clear that Tidwell has prevailed in this litigation. The plaintiffs succeeded on two of their three substantive claims[14] and were instrumental in prompting substantial changes in the procedures for disbursement of disability benefits to mental patients. This broad remedial relief inured to the benefit of all mental patients in Illinois because plaintiffs also succeeded in their motion for class status. For Tidwell to be considered the prevailing party, it was not necessary that he prevail on all three claims. *See Dawson v. Pastrick*, 600 F.2d 70, 78 (7th Cir. 1979); *Parham v. Southwestern Bell*

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[13] *continued*
Reimbursement Program, 42 U.S.C. § 1383(g)(1). Direct payments to state agencies under section 1383(g)(1) do not violate section 407.

[14] The only claim Tidwell did not prevail on was the claim that the appointment of a representative payee was a *per se* violation of the Constitution.

Telephone Co., 433 F.2d 421 (8th Cir. 1970). The record does not disclose any special circumstances which would render the award of fees unjust. *See Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968).

V

The only remaining issue is whether the amount of the fees awarded was erroneous. The State contends that the award was excessive for several reasons:

(1) The State was held responsible for fees relating to issues involving only the federal defendant;

(2) the fees awarded to the Cook County Legal Assistance Foundation ("CCLAF") are duplicative; and

(3) the use of a 1.5 lodestar multiplier was erroneous.

We reject the State's first two arguments but agree with its third contention.

The State insists that the illegal appointment of a representative payee involved only federal culpability and the State of Illinois should not be held liable for attorney's fees relating solely to this issue. The State's assertion of innocence is directly controverted by the findings of the district court. The court found that a conspiracy existed between the state and federal defendants.[15] To prove the existence of a civil conspiracy, it is not necessary to show an express agreement. All that is required is that the participants share a "general conspiratorial objective." *Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir. 1979). In the instant case, the illegal diversion of Social Security benefits from the plaintiffs

[15] The State argues that a finding of conspiracy was never made by the three-judge court. A single district court judge first identified the existence of a conspiracy in his order awarding attorney's fees. It was not necessary for the three-judge court to have made the finding of conspiracy. This case was disposed of by the three-judge panel on summary judgment and no findings of fact are required by Fed.R.Civ.P. 56.

to the state defendant was the common conspiratorial objective.

Relying on *Arnold v. IBM*, 637 F.2d 1350 (9th Cir. 1981), the State next argues that the conduct of the DMH was not the proximate cause of Tidwell's injuries: the appointment of a representative payee is not illegal *per se* and the only illegal aspect of the procedure was solely within the control of the federal defendants.[16] Not only is *Arnold* factually distinguishable from the instant case,[17] it was not necessary for the state defendant to have had control over the illegal procedures when the DMH willingly participated in and benefited from the procedures. *Arnold* requires only that the defendant "personally participated in a deprivation of the plaintiff's rights." 637 F.2d at 1355. The DMH's participation in a conspiracy is clearly established by the record. The appointment of a DMH superintendent as a representative payee was usually initiated by the state institution. The institution was required to fill out a five-page application and submit evidence indicating that the institution was responsible for the patient's care. Each time a DMH institution superintendent applied to become a representative payee, the DMH set in motion a series of acts where the reasonable outcome was a con-

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[16] The State of Illinois did have some control over the appointment of a representative payee. This is demonstrated by the fact that the State amended Ill. Rev. Stat. ch 91½ § 2-105 (1979) to require informed consent before a service provider (DMH superintendent) can be appointed a representative payee.

[17] In *Arnold v. IBM*, *supra*, the Ninth Circuit held that no causation was proven where IBM created a task force which violated plaintiff's constitutional rights. Although IBM was the "but for" cause of plaintiff's injuries, the court found that IBM did not have sufficient control over the task force to be held responsible for its actions. The instant case is distinguishable because the DMH set in motion a series of acts w.:n the DMH knew or should have known that a constitutional injury was the only reasonable outcome. In *Arnold* a constitutional violation was not a reasonable outcome of establishing the task force.

stitutional injury. *See Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). The representative payee procedures involved both federal and state liability and it was well within the district court's discretion to assess attorney fees against the state on this important issue.

In arguing that the attorney's fees awarded to CCLAF are duplicative, the State maintains that both sets of attorneys billed for briefs on the same issue and both sets of attorneys billed for the same court appearance. The State, however, has overlooked the procedural posture of this case. As stated above, this suit involved two sets of plaintiffs: the Tidwell plaintiffs and the Schreckenberg plaintiffs. In accordance with a stipulation, an attorney for the Tidwell plaintiffs was designated lead counsel for the consolidated cases. Almost all the hours billed by CCLAF were for work done prior to the certification of the class; the two groups of plaintiffs were still separate and distinct up to this point. The only work performed by CCLAF after the class certification related to the petition for attorney's fees.[18] We do not believe that the district court overlooked any duplication of efforts.

Having examined all of the factors for determining the appropriateness of a fee award as outlined in *Waters v. Wisconsin Steel Workers of International Harvester Co.*, 502 F.2d 1309 (7th Cir. 1974), *cert. denied*, 425 U.S. 997, we believe that it was an abuse of discretion to attach a 1.5 multiplier to the attorney's fees awarded in this case. The district court premised the multiplier on the importance of the results achieved by Tidwell's attorneys. We agree with the district court that the results achieved are important, but we do not think that this

[18] The State points out that CCLAF billed for an appearance not corroborated by the docket. In plaintiffs' motion for attorney's fees, reference was erroneously made to a court appearance on January 8, 1980. The correct date was December 27, 1979. This typographical error is no reason to deny or limit the award of fees and the error would have been corrected in the district court if defendants had raised the issue below.

factor alone justifies the use of the multiplier.[19] The quality of the attorney's services was reflected in the hourly rates and the facts of this case are relatively simple. This suit was indeed novel when filed but not so different or unique as to warrant a multiplier. The other factors outlined in *Waters* were not important enough to be mentioned by the district court and we agree that these factors were insignificant.

The district court's order is affirmed in part and reversed in part. The cause is remanded to that court to recompute the attorney's fees in accordance with this opinion.[20]

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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[19] It is possible that results alone might justify a multiplier but this is not the case here.

[20] The only aspect of the fee award that the State agrees with is the denial of fees to appellant M. Daniel Friedland. The district court held that it would be unjust to tax the State of Illinois for Friedland's fees because Friedland represented an Indiana plaintiff and his case was directed at Indiana officials. Friedland may well have had some connection with the attorneys for the Illinois plaintiffs, but we cannot say the court abused its discretion by denying fees to him.